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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Juan Amaya,
Plaintiff,

No. CV-21-08243-PCT-MTL

ORDER

Future Motion Incorporated, et al.,
Defendants.

I.

The matter comes before the Court on Defendant Future Motion Incorporated’s (“Future Motion”) Motion for Summary Judgment (Doc. 23). Plaintiff Juan Amaya filed a response (Doc. 27), and Future Motion filed a reply (Doc. 29). The instant action originated in Coconino County Superior Court where Plaintiff filed his Complaint on September 28, 2021. (Doc. 1-3 at 11.) Future Motion subsequently filed a Notice of Removal with this Court. (Doc. 1.) Plaintiff’s Complaint against Future Motion asserts claims for Respondeat Superior, Negligence, Strict Liability, Breach of Implied Warranty of Merchantability, Negligent Hiring, Training, Retention and Supervision, and Punitive Damages. (Doc. 1-3 at 5-10.) For the following reasons the Court grants Defendant’s Motion for Summary Judgment in its entirety.¹

¹ The parties have submitted legal memoranda, and oral argument would not have aided the Court's decisional process. See *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998); see also LRCiv 7.2(f); Fed. R. Civ. P. 78(b).

II.

2 Future Motion designs, manufactures, and sells a one-wheeled motorized
3 skateboard known as the “Onewheel.” (Doc. 9 at 2; Doc. 23 at 2-3.) Plaintiff’s claims stem
4 from a May 6, 2020 accident involving his use of the Onewheel. (Doc. 27 at 3.) Plaintiff
5 alleges that, as he was riding his Onewheel uphill, “the speed began to drastically fluctuate
6 suddenly and without warning, and without his input to change the speed.” (*Id.*) Plaintiff
7 alleges that “[t]hese erratic and sudden speed fluctuations caused him to be thrown from
8 the [Onewheel] and become injured.” (*Id.*) He contends that he “was thrown because the
9 [Onewheel] was not properly calibrated upon delivery.” (*Id.*) First Motion maintains that
10 Plaintiff has failed to provide sufficient evidence in support of his claims. (Doc. 29 at 2-5.)
11 Plaintiff responds that his sworn declaration is sufficient evidence to allow a jury to
12 determine that First Motion is strictly liable for his injuries. (Doc. 27 at 6.) Plaintiff further
13 argues that whether “an unresponsive, mis-calibrated, motorized skateboard constitutes an
14 unreasonably dangerous defect” is genuine issue of material fact within the sole province
15 of the jury. (*Id.* at 7.) For the reasons stated below, the Court finds that Plaintiff has failed
16 to meet his burden at the summary judgment stage.

III.

Summary judgment is appropriate if the evidence, viewed in the light most favorable to the nonmoving party, demonstrates “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A genuine issue of material fact exists if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party,” and material facts are those “that might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). At the summary judgment stage, “[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [its] favor.” *Id.* at 255; see also *Jesinger v. Nev. Fed. Credit Union*, 24 F.3d 1127, 1131 (9th Cir. 1994) (“The court must not weigh the evidence or determine the truth of the matters asserted but only determine whether there is a genuine issue for trial.”). To prove its burden, however, “the

1 moving party need not introduce any affirmative evidence (such as affidavits or deposition
 2 excerpts) [and] may simply point out the absence of evidence to support the nonmoving
 3 party's case." *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 532 (9th Cir. 2000).
 4 A party opposing summary judgment must "cit[e] to particular parts of materials in the
 5 record" establishing a genuine dispute or show "that the materials cited do not establish the
 6 absence . . . of a genuine dispute." Fed. R. Civ. P. 56(c)(1). The Court has no independent
 7 duty "to scour the record in search of a genuine issue of triable fact." *Keenan v. Allan*, 91
 8 F.3d 1275, 1279 (9th Cir. 1996).

9 IV.

10 A.

11 Plaintiff's response indicates that he seeks to bring a strict liability claim for
 12 manufacturing defect, and his briefing relates only to that claim. (Doc. 27 at 6.) Arizona
 13 law provides that "the theory of liability under implied warranty has been merged into the
 14 doctrine of strict liability." *D'Agnese v. Novartis Pharms. Corp.*, 952 F. Supp. 2d 880, 890
 15 (D. Ariz. 2013) (citation omitted).² Therefore, Plaintiff's breach of implied warranty of
 16 merchantability claim merges with his strict liability claims, and the Court's reasoning with
 17 respect to the strict liability claim—as articulated below—applies equally to the implied
 18 warranty of merchantability claim. *See Canning v. Medtronic Inc.*, No. CV-19-04565-
 19 PHX-SPL, 2022 WL 1123061, at *4 (D. Ariz. Apr. 14, 2022) (stating the same). Similarly,
 20 as to Plaintiff's negligence theory, the Court will first address Plaintiff's strict liability for
 21 manufacturing defect because "if Plaintiff cannot prove his case in strict liability, he cannot
 22 prove it in negligence either." *Canning*, 2022 WL 1123061, at *5 (citing *Gomulka v.*
 23 *Yavapai Mach. & Auto Parts, Inc.*, 155 Ariz. 239, 241-42 (Ct. App. 1987)).

24 To establish a case of strict product liability under Arizona law, Plaintiff must prove
 25 that: (i) the product is defective and unreasonably dangerous; (ii) the defective condition
 26 existed at the time the product left the defendant's control; and (iii) the defective condition

28 ² The Court applies substantive state law to a products liability claims brought pursuant to diversity jurisdiction. *See Stilwell v. Smith & Nephew, Inc.*, 482 F.3d 1187, 1193 (9th Cir. 2007).

1 is the proximate cause of the plaintiff's injuries. *See Canning*, 2022 WL 1123061, at *5
 2 (citing *St. Clair v. Nellcor Puritan Bennett LLC*, No. CV-10-1275-PHX-LOA, 2011 WL
 3 5331674, at *4 (D. Ariz. Nov. 7, 2011)). The elements of a negligence theory differ only
 4 in that Plaintiff must also show that First Motion breached its duty of care. *See Cox v.*
 5 *Yamaha Motor Corp.*, No. CV-06-519-TUC-DCB, 2008 WL 2328356, at *6 (D. Ariz. June
 6 4, 2008). The Court finds that Plaintiff has failed to provide sufficient evidence that his
 7 Onewheel was defective.

8 Plaintiff's conclusory declaration is insufficient to survive summary judgment.³
 9 Plaintiff's declaration merely restates his previous allegations that because the Onewheel
 10 "was not properly calibrated upon delivery[,]” an “erratic and sudden speed fluctuation”
 11 caused him to be thrown and injured. (Doc. 28 at 6.) Plaintiff has never explained what he
 12 means by the word “calibration” or how the Onewheel was “not properly calibrated upon
 13 delivery.” Further, Plaintiff is not an expert and fails to provide any facts demonstrating
 14 his knowledge of, or use of reliable principles and methods of testing, the calibration of
 15 motorized skateboards. *See Cox*, 2008 WL 2328356, at *6 (finding a similarly situated
 16 plaintiff unqualified to present expert opinion for failure to provide facts showing
 17 specialized knowledge in a product’s components). Although Plaintiff is not required to
 18 produce expert testimony to survive summary judgment on his strict product liability claim,
 19 he must show “specific facts showing that there is a genuine issue for trial.” *Cox*, 2008 WL
 20 2328356, at *7 (internal marks and citation omitted). The declaration’s conclusory
 21 allegations are insufficient. *See Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990)
 22 (reasoning that the object of Rule 56(e) is “not to replace conclusory allegations of the
 23 complaint or answer with conclusory allegations of an affidavit”). Rather than point to
 24 specific facts showing that there are genuine, product liability claims for trial, Plaintiff’s
 25 declaration offers only the conclusory statement that he “was thrown because the

26 ³ Plaintiff filed his declaration as part of a separate statement of facts “[p]ursuant to Ariz.
 27 R. Civ. P. Rule 56(c).” (Doc. 28 at 1.) Not only is this Court is not bound by Arizona’s
 28 Rules of Civil Procedure, but Plaintiff also filed his separate statement of facts in clear
 violation of the Court’s Scheduling Order prohibiting parties from filing separate
 statements of fact to their dispositive motions. (See Doc. 16 at 5.) In any event, the filings
 submitted do not alter the Court’s analysis.

1 [Onewheel] was not properly calibrated upon delivery.” This bare and speculative
 2 allegation does not demonstrate a genuine issue of material fact for trial. *See Cox*, 2008
 3 WL 2328356, at *7.

4 Plaintiff maintains that there is evidence that the Onewheel was defectively
 5 calibrated at the time it left First Motion’s control. (Doc. 27 at 8.) Specifically, Plaintiff
 6 argues that his use of “the product the day after it arrived” provides a reasonable inference
 7 that the product was sold in a defective condition. (*Id.*) Arizona courts permit plaintiffs “to
 8 rely on circumstantial evidence to establish that a defect existed at the time the product left
 9 the defendant’s control caused the injuries.” *Phila. Indem. Ins. Co. v. BMW of N. Am. LLC*,
 10 No. CV-13-01228-PHX-JZB, 2015 WL 5693525, at *15 (D. Ariz. Sept. 29, 2015) (citing
 11 *Reader v. Gen. Motors Corp.*, 483 P.2d 1388, 1393-94 (Ariz. 1971)). But “Arizona courts
 12 limit reliance on such evidence to situations where the product is unavailable or otherwise
 13 incapable of inspection.” *Phila. Indem. Ins. Co.*, 2015 WL 5693525, at *15 (citation
 14 omitted). Plaintiff admits that his Onewheel is available for inspection. (Doc. 27 at 9.)
 15 Plaintiff, however, maintains that an “[i]nspection of the [Onewheel] could not reveal the
 16 timeline of miscalibration.” (*Id.* at 8.) But Plaintiff provides no reasoning behind this
 17 assertion and the Court is unconvinced that an inspection and examination of the Onewheel
 18 would be a fruitless endeavor. Thus, Plaintiff may not rely on circumstantial evidence
 19 dealing with the timing of his receipt of the Onewheel. Considering the foregoing,
 20 Plaintiff’s claims of strict liability for manufacturing defect, negligence, and breach of
 21 implied warranty of merchantability fail as a matter of law.

22 **B.**

23 As noted above, Plaintiff’s arguments in his responsive briefing related solely to his
 24 strict liability for manufacturing defect claim. But Plaintiff’s Complaint alleged six causes
 25 of action. (Doc. 1-3 at 5-10.) Plaintiff’s remaining claims are for punitive damages,
 26 respondeat superior, and negligent hiring, training, retention and supervision. As First
 27 Motion notes, Plaintiff has offered no evidence in support of these claims. As to the
 28 respondeat superior and negligent hiring, training, retention and supervision claims,

1 Plaintiff has not provided evidence of any employees' conduct relevant to this case.
2 Plaintiff's pleadings do not name any employee and go no further than the bare recitations
3 of each claim's elements. Plaintiff appears to have abandoned these claims entirely.
4 Moreover, because the Court has found that First Motion is not liable for strict liability
5 manufacturing defect, negligence, or breach of implied warranty, there is no underlying
6 wrongful conduct that could serve the basis for the respondeat superior and negligent
7 hiring, training, retention and supervision claims. Thus, Plaintiff has failed to meet its
8 burden and summary judgment in favor of First Motion is warranted on these claims. *See*
9 *Fairbank*, 212 F.3d at 532 (reasoning that a "moving defendant may shift the burden of
10 producing evidence to the nonmoving plaintiff merely by 'showing'—that is, pointing out
11 through argument—the absence of evidence to support plaintiff's claim").

12 Lastly, Arizona law does not provide a separate cause of action for punitive
13 damages. *See Brill v. Lawrence Transportation Co.*, No. CV-17-01766-PHX-JJT, 2018
14 WL 6696815, *2 (D. Ariz. Dec. 20, 2018) ("[T]he right to an award of punitive damages
15 must be grounded upon a cause of action for actual damages.") (citation omitted). "The
16 primary question where punitive damages are concerned is motive." *Id.* Again, Plaintiff
17 has failed to produce any evidence regarding an improper motive, and there is no actual
18 damages cause of action remaining. Therefore, Plaintiff's punitive damages arguments fail
19 as a matter of law.

20 C.

21 Plaintiff has failed to point the Court to any particular materials in the record
22 establishing a genuine dispute of material fact. Instead of coming forward with specific
23 facts showing that there are genuine, manufacturing-defect claims for trial, Plaintiff rests
24 on his conclusory declaration restating the allegations set forth in his Complaint and Initial
25 Disclosures. Furthermore, Plaintiff's responsive briefing abandons the remainder of his
26 claims and offers no evidence in support thereof. As a result, the Court will enter summary
27 judgment in favor of First Motion on all of Plaintiff's claims.

28

V.

Accordingly,

IT IS ORDERED granting Defendant Future Motion Incorporated's Motion for Summary Judgment (Doc. 23).

IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment in favor of Defendant on all claims and close this case.

Dated this 28th day of December, 2022.

Michael T. Fiburdi

Michael T. Liburdi
United States District Judge